IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.405 OF 2005
IN
NOTICE OF MOTION NO.2510 OF 2002
IN
SUIT NO.4480 OF 1997

Gulam Sabbir s/o.Shabbir Hussain Qureshi. ... Appellants

vs.

1. Rekha Samir Kundu & ors. ... Respondents

Mr.Milind Vasudeo with Mr.A.G.Damle i/b.Mr.A.G.Damle for the appellants.

Mr.D.R.Zaiwala, Senior Counsel with Mr.S.H.Mehta and Mr.Ayaz Bilawala i/b.M/s.Bilawala & Co. for the respondents.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 17th January 2006

P.C.

Heard Mr.Milind Vasudeo, the learned counsel for the appellant and perused the impugned order.

2. In Civil Suit No.4480/1997 filed by the present appellant, decree for possession of the suit property was sought against two defendants (one) Samir Kundu and (two) Rekha Samir Kundu. The parties filed to the consent terms dated 23rd August 2000 and, accordingly, consent decree was passed. In execution of the consent decree, the respondent no.3 was sought to be dispossessed. The respondent no.3 took out notice of motion that it be clarified that the consent decree does

not bind and is not executable against the respondent no.3-company. By the impugned order, the learned motion Judge allowed the notice of motion and held that the consent decree did not bind and was not executable against the respondent no.3-company.

3. Indisputably the respondent no.3 namely; M/s.Seaking Club (Pvt.) Ltd. was not party to the Suit. Merely because the Suit was filed against the persons who had shareholding in the respondent no.3-company and that consent decree was passed cannot and shall not bind the company which is corporate entity and exists independent of its shareholders. We find no justifiable reason to take a view different from the learned motion Judge that a decree obtained by the plaintiff against the two independent defendants holding shares in the Company by consent cannot bind the company.

4. Appeal does not deserve to be admitted and is dismissed in limine.

5. Needless to say that it is always open to the appellant to prosecute an independent remedy for the redressal of his grievance against the company.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)